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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,238	10/23/2003	Huamin Chen	Y0R920030422US1	1434
7590 Ryan, Mason & Lewis, LLP 90 Forest Avenue Locust Valley, NY 11560			EXAMINER SALL, EL HADJI MALICK	
		ART UNIT 2157	PAPER NUMBER	
			MAIL DATE 11/27/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/693,238	CHEN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	El Hadji M. Sall	2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 01 January 1937.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-37 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \*    c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date: _____	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____

***DETAILED ACTION***

1. This action is responsive to the amendment filed on September 19, 2007. Claims 1-37 are pending. Claims 1-37 represent method and systems for dynamically reconfigurable load balancing.

2. ***Claim Rejections - 35 USC § 102***

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-35 and 37 are rejected under 35 U.S.C. 102(e) as being unpatentable over Goodman et al. U.S. 7,020,697.

Goodman teaches the invention as claimed including Architectures for netcentric computing systems (see abstract).

As to claims 1, 17, 29-31 and 37, Goodman teaches a method, an apparatus, an article of manufacture and a system for serving data to a plurality of clients in a client-server environment, comprising the steps of:

providing a plurality of versions of data in which at least two versions have different overheads associated therewith (column 69, lines 15-18);

assigning individual clients to one of a plurality of quality-of-service classes (column 99, lines 52-61); and

satisfying requests so that a client belonging to a high quality-of-service class is given preferential access to data versions which require higher overheads to serve (column 25, 3-21).

As to claims 2 and 18, Goodman teaches the method and the apparatus of

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claims 1 and 17, wherein the overhead to serve a version is correlated with a quality of the version (column 27, lines 14-23).

As to claims 3 and 19, Goodman teaches the method and the apparatus of claims 2 and 18, wherein the multiple versions comprise images of different resolutions and clients belonging to a high quality-of-service class are given preferential access to higher resolution images (column 99, lines 52-61).

As to claims 4 and 20, Goodman teaches the method of claims 2 and 18, wherein the quality of a version is correlated with a processing time required to create the version (column 26, lines 33-40).

As to claims 5 and 21, Goodman teaches the method of claims 1 and 17, wherein the overhead to serve a version is correlated with how current the version is (column 22, lines 4-12).

As to claims 6 and 22, Goodman teaches the method and the apparatus of claims 1 and 17, further comprising the step of: in response to a system load exceeding a threshold, satisfying a higher percentage of requests from clients belonging to a lower quality-of-service class with a version requiring lower overhead to serve (column 25, 3-21).

As to claims 7 and 23, Goodman teaches the method and the apparatus of claims 1 and 17, wherein the server comprises multiple nodes and different nodes provide data versions requiring different overheads to serve (figure 4).

As to claims 8, 9, 10, 11, 24, 25, 26 and 27, Goodman teaches the method and the apparatus of claims 1, 8, 17 and 24, further comprising the step of implementing a quality-of-service policy that specifies at least one of content quality and latency, wherein one or more clients belonging to a premium service class are served with high content quality and low latency, wherein one or more clients belonging to a medium service class are served with one of high content quality and low latency, and wherein one or more clients belonging to a best-effort service class are served with unspecified content quality and latency (column 79, lines 35-59; column 98, lines 46-58).

As to claims 12 and 28, Goodman teaches the method of claims 1 and 17, wherein a client request is routed using at least one of an identity of the client, a quality of content, a load on at least one server, a data distribution on at least one server, and a capacity of at least one server (column 108, lines 30-44).

As to claims 13 and 14, Goodman teaches the method of claims 1 and 13, wherein a client is assigned to a quality-of-service class by program logic that is externalized from the server, wherein the externalized program logic comprises a set of business rules that can be modified by nonexperts in information technology (column

99, lines 52-61; column 112, lines 25-36).

As to claims 15 and 16, Goodman teaches the method of claims 1 and 15, further comprising the step of satisfying requests using a policy determined by program logic that is externalized from the server, wherein the externalized program logic comprises a set of business rules that can be modified by nonexperts in information technology (column 25, 3-21).

As to claim 32, Goodman teaches the method of claim 31, wherein the data serving service comprises a quality-of-service policy specification (column 99, lines 52-53).

AS to claim 33, Goodman teaches the method of claim 32, wherein the quality-of-service policy specification comprises: a plurality of subscriptions, each subscription being specified by content quality and service latency, wherein a limited premium service subscription is served with high content quality in low service latency, a medium service subscription is served with a high content quality or a low service latency, and an unlimited best-effort service subscription is served with unspecified content quality and latency (column 79, lines 35-59; column 98, lines 46-58).

As to claims 34 and 35, Goodman teaches the of claims 31 and 34, wherein the service provider modifies data content and how the data content is served to clients in

response to one or more changing conditions (column 114, line 56 to column 115, line 4).

**4. *Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

**5. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goodman et al. U.S. 7,020,697 in view of Huff U.S. 20040003080.**

Goodman teaches the invention substantially as claimed including Architectures for netcentric computing systems (see abstract).

As to claim 36, Goodman teaches the method of claim 31.

Goodman fails to teach explicitly the step of assigning individual clients to one of a plurality of quality-of-service classes is based on a client payment.

However, Huff teaches method and system for managing quality of service in a network. Huff teaches the step of assigning individual clients to one of a plurality of quality-of-service classes is based on a client payment (paragraph [0012]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Goodman in view of Huff to provide the step of assigning individual clients to one of a plurality of quality-of-service classes is based on a client payment. One would be motivated to do so to allow identifying relative priorities of the clients (abstract).

## **6. *Response to Arguments***

Applicant's arguments filed 09/19/07 have been fully considered but they are not persuasive.

(A) Applicant argues that Goodman has absolutely nothing to do with serving data to a plurality of clients wherein requests are satisfied so that a client belonging to a high quality-of-service class is given preferential access to data versions which require higher overheads to serve (e.g., higher quality content).

In regards to the point (A), Examiner respectfully disagrees.

Column 25, 3-21, Goodman discloses ...define explicit criteria for assigning priority; consider raising the priority of low-priority opportunities that can be completed quickly (i.e. raising the priority to high-priority to "give preferential access to data versions which require higher overheads")....This portion of Goodman clearly discloses that requests are satisfied so that a client belonging to a high quality-of-service class is given preferential access to data version which require high overheads to serve (i.e. activities such as "satisfying requests" can be completed quickly).

(B) Applicant argues that Goodman clearly does not indicate that such multiple versions have different overheads associated with them.

In regards to the point (B), Examiner respectfully disagrees.

Column 69, lines 15-18, Goodman discloses...data management tools provide backup and restore facilities for data, and also provide configuration management for multiple versions of data (i.e. more than two version having different overheads associated with them), maintaining consistency among versions of test data

(C) Applicant argues that it is clear that Goodman only discloses prioritized handling of entire classes of traffic. Goodman does not disclose assigning individual clients to different quality of service classes. It can be understood that Goodman does not disclose quality of service classes either.

In regards to the point (C), Examiner respectfully disagrees

Column 99, lines 52-61, Goodman discloses the quality of service services 244 may also use data prioritization to improve network performance. While not an example of end-to-end QoS, various network components can be configured to prioritize their handling of specified types of traffic (i.e. "assigning individual clients to different quality of service classes"). For example, routers can be configured to handle legacy mainframe traffic (SNA) in front of other traffic (e.g., TCP/IP). A similar technique is the use of prioritized circuits within Frame Relay, in which the Frame Relay network vendor assigns different priorities to different permanent virtual circuits. Goodman discloses assigning individual clients to different quality of service classes.

7. *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to El Hadji M Sall whose telephone number is 571-272-4010. The examiner can normally be reached on 8:00-4:30.

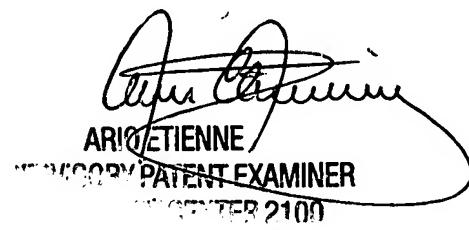
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

El Hadji Sall  
Patent Examiner  
Art Unit: 2157



ARISTIENNE  
PATENT EXAMINER  
ART CENTER 2100